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INDIGENOUS ISSUES

Report of the working group established in accordance with Commission on Human Rights resolution 1995/32

Chairperson-Rapporteur: Mr. Luis-Enrique Chávez (Peru)

1. By resolution 1995/32 of 3 March 1995, the Commission on Human Rights decided to establish an open-ended inter-sessional working group of the Commission on Human Rights with the sole purpose of elaborating a draft declaration, considering the draft contained in the annex to resolution 1994/45 of 26 August 1994 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities entitled "Draft United Nations declaration on the rights of indigenous peoples" for consideration and adoption by the General Assembly within the International Decade of the World's Indigenous People. This decision was endorsed by the Economic and Social Council in its resolution 1995/32 of 25 July 1995.

2. The working group held seven formal meetings and nine informal plenary meetings during the period 18-29 October 1999. A total of 331 people attended the meetings of the working group, including representatives of 47 Governments and 52 indigenous and non-governmental organizations.

3. The present report contains a record of the general debate. The debate which took place in the informal plenary meetings is reflected in the summaries of the Chairperson-Rapporteur.

4. This report is solely a record of the debate and does not imply acceptance of the usage of either the expression "indigenous peoples" or "indigenous people" by all Governments. In this report both terms are used without prejudice to the positions of particular delegations, where divergence of approach remains.

5. It is noted by indigenous representatives that all indigenous representatives and some Governments could accept the expression "indigenous peoples" as used in the current text of the draft declaration.

Opening of the session

6. The working group was opened by the Deputy High Commissioner for Human Rights, Mr. Bertrand Ramcharan.

7. At its first meeting, the working group elected by acclamation Mr. Luis-Enrique Chávez (Peru) as its Chairperson-Rapporteur.

Documentation

8. The working group had before it the following documents:

Provisional agenda (E/CN.4/1999/WG.15/1);

Draft report of the working group established in accordance with Commission on Human Rights resolution 1995/32 of 3 March 1995 (E/CN.4/1999/WG.15/CRP.1-3);

Provisional list of participants (E/CN.4/1999/WG.15/INF.1).

9. The following background documents were made available to the working group:

Technical review of the United Nations draft declaration on the rights of indigenous peoples: note by the secretariat (E/CN.4/Sub.2/1994/2);

Draft United Nations declaration on the rights of indigenous peoples (E/CN.4/Sub.2/1994/2/Add.1);

Reports of the working group established in accordance with Commission on Human Rights resolution 1995/32 of 3 March 1995 on its four previous sessions (E/CN.4/1996/84, E/CN.4/1997/102, E/CN.4/1998/106 and Corr.1 and E/CN.4/1999/82).

Participation

10. The following States members of the Commission on Human Rights were represented: Argentina, Bangladesh, Canada, China, Colombia, Cuba, Ecuador, France, Germany, Guatemala, India, Indonesia, Italy, Japan, Mexico, Morocco, Norway, Pakistan, Peru, Philippines, Poland, Russian Federation, Sudan, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela.

11. The following States Members of the United Nations were represented by observers: Australia, Belgium, Bolivia, Brazil, Costa Rica, Denmark, Estonia, Finland, Honduras, Iraq, Jordan, Libyan Arab Jamahiriya, Malaysia, Netherlands, New Zealand, Nicaragua, Saudi Arabia, Spain, Sweden.

12. The following non-member States were represented by observers: Holy See, Switzerland.

13. The following specialized agencies and intergovernmental organizations were represented by observers: International Labour Organization, European Parliament.

14. The following indigenous and non-governmental organizations in consultative status with the Economic and Social Council were represented by observers:

Indigenous organizations: American Indian Law Alliance, Aboriginal and Torres Strait Islander Commission (ATSIC), Asociación Kunas Unidos por Napguana, Comisión Jurídica para el Autodesarrollo de los Pueblos Originarios Andinos (CAPAJ), Grand Council of the Crees (Eeyou Istchee), Indian Council of South America (CISA), Indian Law Resource Center, Indian Movement "Tupaj Amaru", Indigenous World Association, Innu Council of Nitassinan (Innu Nation), International Indian Treaty Council, International Organization of Indigenous Resource Development, Inuit Circumpolar Conference, National Aboriginal and Torres Strait Islanders Legal Services Secretariat (NAILSS), Saami Council.

Non-governmental organizations: Academic Council on the United Nations System, Asian Buddhist Conference for Peace, Centre Europe-Tiers monde (CETIM), Earthjustice Legal Defense Fund, International Centre for Human Rights and Democratic Development (ICHRDD), International Movement against all Forms of Discrimination and Racism (IMADR), International Service for Human Rights, International Work Group for Indigenous Affairs (IWGIA), Latin American Human Rights Association (ALDHU), Nord-Sud XXI and Society for Threatened Peoples, South Asia Human Rights Documentation Centre.

15. The following organizations of indigenous people accredited in accordance with Commission on Human Rights resolution 1995/32 were represented by observers: Ainu Association of Sapporo, Assembly of First Nations, Association pour le développement des Batwa du Rwanda, Association for the Shor People, Association nouvelle de la culture et des arts populaires, Association of Indigenous Peoples of the North, Siberia and Far East, Aukin Wallmapu Ngulam, Black Hills Teton Sioux Nation, Catawaba Indian Nation, Comisión Jurídica de los Pueblos de Integración Tahuantinsuyana (COJPITA), Cordillera Peoples Alliance, Finno-Ugric Peoples' Consultation Committee, Foundation of Aboriginal and Islander Research Action, Indigenous Woman Aboriginal Corporation, International Alliance of Indigenous Tribal Peoples of the Tropical Forests, Lumad Mindanaw Peoples Federation, Mejlis of Crimean Tatar People, Metis National Council, Na Koa Ikaika o Ka Lahui Hawaii, Movimiento Revolucionario Tupaj Katari de Liberación, Navajo Nation, Organization for Survival of the Illaikipiak Indigenous Maasai Group Initiative, Taller de Historia Oral Andina, Upper Sioux Community/Pejihutazizi Oyate, Wellington Maori Legal Services Inc.

Organization of work

16. In his opening statement, at the first meeting, the Chairperson-Rapporteur said that the main purpose of the session was to continue moving forward. He recognized the important work that had been carried out during the past four sessions of the working group by his predecessor, Mr. José Urrutia (Peru). He emphasized that thanks to Mr. Urrutia's efforts the working group had been able to accumulate an important capital in terms of working methods and confidence building between the participants. This was a legacy that should be protected. The Chairperson-Rapporteur said he was committed to continuing the work in the same spirit of dialogue and transparency and with full participation.

17. At the second meeting the provisional agenda (E/CN.4/1999/WG.15/1) was adopted.

18. The Chairperson-Rapporteur gave a brief summary of the consultations he had had with representatives of Governments and of indigenous organizations on the organization of work. He said that in general terms there was broad agreement on his proposed draft plan of work. There was agreement on having a general debate on the following central themes: general aspects of the process, self-determination, land rights and natural resources. There was also general concurrence that during the current session the working group should focus on articles 15, 16, 17 and 18, and that some progress could be made on articles 1, 2, 12, 13, 14, 44 and 45. He stated that despite general consensus on his proposal, no agreement could be reached on the possibility of providing for informal consultations between Governments during the session of the working group. According to that proposal, indigenous representatives would be allowed to be present at the informal consultations in order to allow for transparency, but could not take an active role. The Chairman-Rapporteur opened the floor to those who wanted to discuss that specific matter in a final effort at conciliation.

19. The co-chair of the indigenous caucus emphasized that indigenous representatives had fought long and hard to have full participation in the working group. He said that the valuable time of the working group should not be taken up by informal governmental meetings. He was concerned that the formalization of informal meetings excluding the participation of indigenous peoples would be a step backwards and said that indigenous peoples objected to it. Indigenous peoples were also concerned about the impact it would have on the draft declaration itself and that it would detract from the transparent and participatory process that they had agreed to take part in. Indigenous peoples were not opposed in principle to the idea of informal meetings of that kind, but could not accept their being included in the official work plan during the time scheduled for regular sessions.

20. The representative of the Asociación Kunas Unidos por Napguana said that to legitimize informal governmental meetings during the working group session would violate the principle established in Commission on Human Rights resolution 1995/32, which provided for the participation of indigenous representatives. Furthermore, indigenous representatives reiterated that informal governmental meetings could not be part of the official work plan. There could be informal meetings if the chairperson deemed them necessary. However, their outcomes could not be part of the final report, unless agreed to in the plenary.

21. The representative of Canada noted the concerns expressed by indigenous organizations. However, she stated that informal governmental meetings were essential to ensure broad governmental participation in the elaboration of the draft declaration.

22. The representative of the United States of America supported the comments made by the representative of Canada and believed that it was valuable to have informal governmental meetings in order to develop precise texts and discuss alternative wording.

23. The representative of New Zealand considered that the full engagement of indigenous peoples was vital and valuable. She agreed that the provision of time in the work programme for consultations for both Governments and indigenous people was a practical suggestion. However, in order to have an atmosphere of confidence and to ensure progress, she would agree to striking informal governmental meetings from the work plan and proposed that, if the chairperson deemed it necessary, time should be made available for the holding of informal consultations in a flexible manner.

24. The Chairperson-Rapporteur proposed a revised work programme which would not include a time-frame for informal governmental meetings, but would allow for the plenary to be suspended if requested by the participants, whether governmental or indigenous representatives, and when the chairperson considered it useful and a contribution to the process. He asked for initiatives which would achieve progress and would aid the process and, in that regard, he requested all participants to meet informally in order to try to narrow their differences on the draft articles. He also thanked the governmental delegations for their willingness to invite indigenous representatives as observers to their informal consultations.

25. The chairperson's proposal for the organization of work, as amended, was approved by the working group.

General debate

(a) General aspects

26. The representative of Australia believed that the valuable work done during the previous session of the working group to clarify differing views on the elements of the text, particularly articles 15 to 18, had provided the working group with a solid basis for progress.

27. The representative of New Zealand recognized that the elaboration of international standards in the field of human rights had always been a slow and complex process. Nevertheless, it was crucial that the working group should make tangible progress at the current session. She hoped that, building on the previous year's efforts, consensus might be achieved on some substantive articles, and considered that articles 15, 16, 17 and 18 offered the most potential in that regard. In addition to those articles, she was willing to participate in dialogue on other articles and issues that States and indigenous representatives might wish to discuss.

28. Many indigenous representatives stated that it was a basic principle of international law that human rights must be uniformly and universally applied. Without the equal application of

international law and standards, the fundamental integrity of international standard-setting itself was called into question. That inalienable right should be upheld during the elaboration of the draft declaration and applied to indigenous peoples.

29. The representative of the Indian Law Resource Center pointed out that during the discussion participants should take into account three principles, namely, the principles of equality, non-discrimination and absolute prohibition of racial discrimination. She emphasized the need for a genuine dialogue and she said that the working group should contribute to the progressive evolution of international human rights standards as they applied to indigenous peoples. She called upon Governments not to be limited by domestic legislation and she welcomed the positive achievements in the previous four years by certain Governments and the human rights treaty bodies.

30. Many indigenous representatives called attention to the positive developments in the interpretation of other human rights instruments by other United Nations human rights bodies, such as the Human Rights Committee and the Committee on the Elimination of Racial Discrimination. One indigenous representative said that Governments should reconcile their views with those interpretations.

31. The representative of China acknowledged that the previous Chairperson-Rapporteur of the working group, Mr. José Urrutia, had made a remarkable contribution in pushing forward the work of the working group, and had set a sound basis for reviewing the draft declaration in the future. The representative said that his delegation had on many occasions during previous sessions made its position and views clear on relevant questions his delegation was concerned about in the draft declaration and he would not take time to dwell on them.

32. All indigenous representatives called upon the working group to recommend the speedy adoption of the draft declaration in its current text as approved by the Sub-Commission. The representative of the Indigenous World Association referred to the resolution recently adopted by the Sub-Commission on the Promotion and Protection of Human Rights on the International Decade of the World's Indigenous People (1999/19), in which the Sub-Commission appealed to the Commission on Human Rights to consider ways and means to accelerate the work on the draft declaration. He said that the resolution was in accordance with General Assembly resolution 50/157, which stated that the draft declaration be adopted as early as possible and not later than the end of the International Decade of the World's Indigenous People in 2004.

33. Many indigenous representatives said that the draft declaration was regarded as containing minimum standards for the promotion and protection of the fundamental rights and freedoms of indigenous peoples.

34. The representative of the Association nouvelle de la culture et des arts populaires highlighted the importance of the full participation of indigenous peoples in the working group. He also stated that domestic constitutions should not be taken as an excuse to block progress at the level of international standards. He handed over a petition to the Chairperson-Rapporteur signed by 430 participants in two meetings held in France calling upon the General Assembly to adopt the draft declaration in its current text before the end of 1999.

35. The representative of Cuba said that his Government had always supported indigenous peoples. He noted with interest a change in attitude on the part of some Governments. He said that the draft that the working group had before it was a good basis. However, certain articles needed to be negotiated and/or changed. Nevertheless, changes should strengthen the text. His country supported the work of the working group and hoped that the draft could be turned into a declaration.

36. The representative of Switzerland recalled the urgent need for the adoption of a substantial declaration and said that an insignificant text would be useless.

37. Many indigenous representatives expressed the view that domestic law could not be used to fetter and limit the draft declaration or international law in general. The draft declaration should not be limited by domestic policy. The representative of the Indian Law Resource Center stated that the draft declaration was aspirational, but that it was not the first time that international law had challenged States. To the extent that the Universal Declaration of Human Rights had presented a challenge more than 50 years ago, States should not fear being challenged by the draft declaration today.

38. All indigenous representatives who spoke on this point emphasized the importance of recognizing the collective rights of indigenous peoples, such as those pertaining to land, language and education and, in particular, the right to self-determination. They stated that group rights were not in opposition nor a threat to individual rights.

39. The representative of the International Indian Treaty Council outlined the ongoing attempts of the representative of the United States of America during the previous session of the working group, echoed by the Japanese delegation, to challenge the applicability of the right to self-determination by redefining the term "indigenous peoples". She believed that until this issue was addressed and resolved, there could be no real progress in the adoption of any article in the draft where the term "indigenous peoples" currently appeared.

40. An indigenous representative of the International Work Group for Indigenous Affairs criticized the argument sometimes used by States that the rights of indigenous peoples were guaranteed by other international human rights instruments or, conversely, that the rights of indigenous peoples were aspirational. The issue was not whether the rights of indigenous peoples existed in international law, but that they had been denied. To illustrate his argument, he said that the draft declaration would do for indigenous peoples what the Convention on the Rights of the Child had done for children.

41. Another indigenous representative of the International Work Group for Indigenous Affairs drew the attention of the participants to the absence of African Governments in the working group.

42. The Chairman-Rapporteur summarized the debate. He said that he believed that the general debate had shown that positions were becoming closer. He was pleased to note that indigenous representatives and Governments were fully committed to the process of elaborating a substantive, effective and universal declaration. He said there was agreement that the declaration should be based upon the consensus of all participants and be a document founded on

the principles of equality and non-discrimination. However, he noted that there were still several contentious issues among Governments, such as the question of definition and the use of the expression "indigenous peoples". He suggested that in order to achieve progress in other, less controversial, areas, consideration of those issues could be deferred. He noted that there was a need for wide participation by member States and indigenous representatives. He believed that the working methods established by the working group - namely, to build consensus on the easier articles and to defer difficult issues to a later date - was the right approach. He also believed that, at the same time, progress on difficult issues could be made through consultations.

(b) Self-determination

43. Indigenous representatives affirmed that the right to self-determination, as contained in article 3, is the fundamental underlying principle of the draft declaration. All indigenous representatives called upon the working group to adopt article 3 in its current form.

44. It was also stated by many indigenous representatives that the right to self-determination was a prerequisite for the enjoyment of all other human rights and fundamental freedoms. The representative of the Saami Council said that without agreement on article 3 it would be difficult to reach consensus on other articles.

45. Many indigenous representatives considered that the right to self-determination did not pose a threat to the territorial integrity and sovereignty of States. Such concerns were already met by existing international law and it should therefore not be necessary to make amendments to the draft declaration. Moreover, several indigenous representatives said that the exercise of the right to self-determination provided a means for the peaceful settlement of disputes and that it would strengthen national unity.

46. A representative of the Association of Indigenous Peoples of the North, Siberia and Far East said that States should not be fearful of the right to self-determination: it could be exercised to strengthen the State overall. The right to self-determination was essential to the survival of indigenous peoples.

47. Several indigenous representatives expressed the opinion that the right to self-determination was not a static concept and was continually evolving. It was noted that many Governments still viewed the right to self-determination within the traditional context of decolonization. Many indigenous representatives were concerned that Governments considered the implementation of that right as a pre-defined outcome rather than an ongoing process.

48. A representative of the Metis National Council stated that international law protected the integrity of States when they adhered to international and human rights laws.

49. The representative of the United States of America said that one of the most challenging aspects of the negotiation of the draft declaration would be that of engaging in a continuing dialogue concerning article 3 and its proposed recognition of a right to self-determination for indigenous peoples. He said he hoped the working group would be able to draft a declaration in which States were encouraged to consider a broad range of autonomy for indigenous groups in managing their local and internal affairs, including economic, social and cultural matters. He

expressed his support for the general principle of self-determination as enshrined in the Charter of the United Nations and common article 1 of the International Covenants, and referred to a study which had been initiated by his Government concerning the application of the right to self-determination as recognized in the Charter and the Covenants. However, there was no international practice or instrument that accorded indigenous groups everywhere the right to self-determination. He argued that the "peoples" entitled to self-determination under international law were the entire peoples of a State or those that could constitute themselves as a sovereign independent State, and not particular groups within an existing State. The domestic policy of the United States was not affected by its international position on the right to self-determination; in the domestic United States context, self-determination meant promoting tribal self-government and autonomy over a broad range of issues. While the United States used the term "self-determination" in its domestic context, the scope and definition of the right to self-determination in the international context needed clarification. The references in the draft declaration to self-determination would have to be considered carefully to see whether they would meet the tests of clarity and consensus. Although, he recognized the views expressed by some Governments and academics that the right to self-determination included both an external and an internal aspect and that the latter applied to groups within existing States, he argued that there was not yet international consensus in that respect.

50. The representative of Canada said that the right to self-determination was central to the draft declaration and fundamental to the international community. Despite its inclusion in the Charter of the United Nations, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, the concept of self-determination and the term "peoples" had not been clearly defined in international law. Although, traditionally, the right to self-determination was understood to apply in the colonial context and was equated essentially with a right of statehood, that view had evolved and was now seen by many as a right which could continue to be enjoyed in a functioning democracy in which citizens participated in the political system and had the opportunity to have input in the political processes that affected them. She restated that Canada accepted a right to self-determination for indigenous peoples which respected the political, constitutional and territorial integrity of democratic States. Prescriptive solutions should be avoided and the right to self-determination should be implemented flexibly through negotiations between Governments and indigenous groups. It would be important for the declaration to reflect those principles clearly.

51. A representative of the Taller de Historia Oral Andina said that the right to self-determination provided the solution for the eradication of poverty, illiteracy, malnutrition and political subordination.

52. The representative of the International Center for Human Rights and Democratic Development strongly supported indigenous representatives' arguments regarding self-determination and believed that States should not feel threatened by recognition of that right without qualification.

53. The representative of Brazil noted that the concept of self-determination was evolving, adapting itself to new circumstances. For his country, the concept could be translated as the

right of indigenous peoples to participate fully in decisions affecting them. He noted the expressions of recognition that the notion of self-determination respected the territorial integrity of States.

54. The representative of Colombia said that the Constitution of his country contained in article 9 a provision relating to the self-determination of peoples which was the pillar of foreign policy. The legal framework of Colombia recognized extensive rights for indigenous communities in the context of autonomy, a concept that was not the equivalent of self-determination.

55. Several indigenous representatives provided examples of how they exercise the right to self-determination in the domestic sphere. The representative of the Navajo Nation stated that his organization supported the right to self-determination and that it was essential to the draft declaration. That right was the foundation upon which all other rights rested. He also noted that without self-determination, indigenous peoples could not exercise in a meaningful manner their rights to practise their religion, to live in harmony on their lands and territories, and to develop and control their natural resources. As evidence of self-determination, the Navajo nation had a treaty with the United States of America which had been ratified by the United States Senate. By that action, the United States Government had chosen to relate to the Navajo people on an equal footing.

56. The representative of Ecuador expressed the support of his delegation for the draft declaration and stated that his Government hoped that the final declaration would differ as little as possible from the draft adopted by the Sub-Commission and that any modifications would enrich and clarify the text. He said that the concept of self-determination as contained in the draft was not equivalent to the principle of international self-determination nor did it imply the territorial dismemberment of States. He noted that the statements of indigenous peoples had confirmed that understanding. He recognized that self-determination was the means of preserving indigenous cultures and communities.

57. The representative of the International Indian Treaty Council stated that the internationally recognized right to self-determination for all peoples was affirmed in several United Nations instruments, including common article 1 of the two International Covenants. It appeared that the majority of States represented at the session were already bound to observe and respect that most fundamental freedom by virtue of their ratification of both Covenants. The representative said that it was inexplicable that States which have ratified the International Covenant on Civil and Political Rights, continue at the same time to express their reluctance to recognize the right to self-determination for indigenous peoples.

58. Many indigenous representatives emphasized that the right of all peoples to self-determination was a fundamental part of international law. They referred to the Charter of the United Nations and common article 1 of the International Covenant on Civil and Political Rights and the International Covenant on Social, Economic and Cultural Rights. Reference was also made to the Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights in 1993.

59. Several indigenous representatives recalled that the majority of States were already bound to observe and respect the right to self-determination by virtue of their ratification of either or both the International Covenants. However, it was said that States continually refused to recognize the application of the right to self-determination to indigenous peoples. Indigenous representatives urged that the elaboration of the right to self-determination should be founded on the principles of equality and non-discrimination.

60. Several indigenous representatives drew attention to the concluding observations on the fourth periodic report of Canada adopted by the Human Rights Committee at its sixty-fifth session (CCPR/C/79/Add.105). It was said that the Committee's observations demonstrated that international practice or international instruments, in particular common article 1 of the International Covenants, accorded indigenous peoples the right to self-determination. In addition, two indigenous representatives referred to the fact that the Human Rights Committee had asked the Government of Norway to report on its position in respect of the Saami people's right to self-determination, in connection with the fourth periodic report of Norway.

61. The representative of the Russian Federation indicated that his delegation had no difficulties in accepting the right to self-determination, although exercise of that right must be subject to the territorial integrity of States.

62. The representative of Australia recognized that the intention of article 3 was to enunciate a key concept in the draft declaration, namely the legitimate aspirations of indigenous peoples to enjoy more direct and meaningful participation in decision-making and political processes and greater autonomy over their own affairs. He reaffirmed his delegation's position that it was unable to accept the inclusion of the term "self-determination" in the draft declaration because for many people it implied the establishment of separate nations and laws.

63. The representative of Argentina reiterated the reservation made in previous sessions by his delegation regarding article 3. In that sense, he underlined the need to include amendments to the preamble and to article 3 to the effect that nothing in the declaration could be interpreted or used to dismember totally or in part the territorial integrity or political unity of a State.

64. The representative of Switzerland supported the inclusion of article 3 in the draft declaration. He said it was an essential right of indigenous peoples and was analogous with the principle of subsidiarity implemented in Switzerland, where local autonomy coexisted with a federal system.

65. The representative of the Assembly of First Nations said that self-determination could not be limited by others, but recognized that indigenous peoples and States must work together to establish a firm basis for peaceful coexistence.

66. The representative of the Maori Legal Service noted that the last time a Maori delegation had participated in the working group had been in 1996. At that time the Maori delegation did not think that there was equal participation of indigenous and governmental representatives in the working group. She said she was present to see whether the right to full and equal participation was being recognized in the working methods of the session. She stated that the limitation of the draft declaration to domestic legal regimes was in direct conflict with the

purpose of international human rights setting and was a contradiction of the principle of good faith. She also noted the limitations placed by the Government of New Zealand on the Treaty of Waitangi and urged it to reconsider its position.

67. The representative of Pakistan said that his delegation fully supported the right to self-determination and article 3 of the draft declaration. Furthermore, his delegation would not support any dilution or change of the concept as enunciated in the text of article 3.

68. The representative of the Comision Juridica para el Autodesarrollo de los Pueblos Originarios Andinos said that indigenous peoples had never renounced the right to self-determination, that was confirmed by their vigorous cultures and the survival of their languages and ways of life. He said that article 3 of the draft provided the conceptual framework for the full participation of indigenous peoples in multi-ethnic and pluricultural States and indeed would strengthen national unity.

69. A representative of the Lumad Mindanaw Peoples Federation stated that self-determination for his people meant self-governance of their territory within the sovereignty of the nation-State. That allowed their survival as distinct peoples.

70. The representative of Finland stated that her delegation fully supported the acceptance of the term self-determination in the draft declaration, provided that the provisions which dealt with self-government or autonomy would be formulated in the manner proposed in article 31, that was to say applying to internal and local affairs. She suggested that article 45 of the declaration should be elaborated in accordance with formulations used in other human rights instruments. She referred in particular to article 8.4 of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities of 1992.

71. The representative of the Saami Council said that the principle and fundamental right to self-determination of all peoples was firmly established in international law, including human rights law, and must be applied equally and universally. The right to self-determination was embodied in the Charter of the United Nations and was recognized in many other international and regional instruments. The inclusion of the right to self-determination in the international human rights covenants emphasized that the right to self-determination was an integral part of human rights law which had a universal application. Moreover, it was recognized that compliance with the right to self-determination was a fundamental condition for the enjoyment of other human rights and fundamental freedoms, be they civil, political, economic, social or cultural. The representative of the Saami Council also said that self-determination should be understood as an ongoing process of choice for the achievement of human security and the fulfilment of human needs with a broad scope of possible outcomes suited to specific situations. One of the main problems in the debate concerning indigenous peoples right to self-determination was that many Governments considered the implementation of that right a pre-defined outcome rather than an ongoing process. The Human Rights Committee, as a competent United Nations body, had already recognized indigenous peoples' right to self-determination. In response to the statement made by the representative of the United States of America, that there seemed to be no international practice or international instruments that accorded indigenous peoples the right to self-determination under the common articles of the Covenants, the representative of the Saami Council referred to those latest developments in the

Human Rights Committee. He said that the observations and questions of the Human Rights Committee demonstrated that an interpretation of indigenous peoples' right to self-determination which excluded indigenous land and resource rights was incompatible with existing international law.

72. All the indigenous representatives who spoke stated that the right to self-determination was intrinsically connected to the recognition of indigenous peoples' rights to land, territories and natural resources.

73. The representative of Guatemala expressed her satisfaction that no State had expressly rejected the inclusion of the right to self-determination in the draft declaration. She said that the right to self-determination was a key component of the draft declaration and reaffirmed her delegation's position that it supported the right to self-determination within the framework of national unity and territorial integrity. However, she accepted that the concept needed clarification and she referred to the explanatory note concerning the draft declaration on the rights of indigenous peoples (E/CN.4/Sub.2/1993/26/Add.1) written in 1993 by Mrs. Erica-Irene A. Daes, Chairperson-Rapporteur of the Working Group on Indigenous Populations, which could be used to assist the process. The representative of Guatemala recalled that the explanatory note stated that the right to self-determination had certain limitations and could not be interpreted as authorizing or encouraging the dismemberment, total or in part, of independent States.

74. The representative of Mexico stated that his delegation understood the right to self-determination as enunciated in article 1 (3) of ILO Convention No. 169. Self-determination in Mexico was interpreted as entailing respect for the territorial integrity of States and domestic and international law.

75. The representative of the International Indian Treaty Council referred to a joint statement to a conference organized by a UNESCO national committee on self-determination. The conference had stated that self-determination contributed to peace and the resolution of conflict.

76. A representative of the International Work Group for Indigenous Affairs referred to article 20 (1) of the African Charter on Human and Peoples' Rights, which stated: "All peoples shall have the right to existence. They shall have the unquestionable and inalienable right to self-determination." She said that it would be unacceptable to have a United Nations declaration which was not in compliance with existing universal and regional legal instruments.

77. The representative of France recognized that the right to self-determination was fundamental to the draft declaration and without it the draft declaration would lose a great deal of significance. He noted that the notion continued to raise serious difficulties for a number of delegations, in particular because it was still linked to the questions of decolonization and territorial integrity. He welcomed the contributions made by indigenous representatives and stated that they could only aid the realization of the common goal of elaborating the best possible declaration.

78. The representative of New Zealand indicated that her delegation could accept the inclusion of the right to self-determination in the draft declaration subject to it being consistent

with the domestic understanding of the relationship between the Maori and the Crown and with respect for the territorial integrity of democratic States and their constitutional frameworks, where those met current international human rights standards. She said that New Zealand reserved the right to approve or reject the specific consequential rights or obligations flowing from self-determination in the draft declaration.

79. The representative of the National Aboriginal and Islanders Legal Services Secretariat considered that the working group should be guided by basic legal drafting principles in elaborating the text of the draft declaration and that the term self-determination should be given its ordinary and natural meaning.

80. The representative of Venezuela said that a reference to self-determination should be in line with the principle of the sovereignty and integrity of the State and called upon participants to continue cooperating to find an acceptable text.

81. The representative of Norway stated that while the right to self-determination was of great importance to all peoples and was firmly established in international law, the term itself had not been clearly defined. The Government of Norway supported the view that that right applied to all peoples under international law, including indigenous peoples. He drew a distinction between the right to self-determination as enshrined in the Charter of the United Nations and in the two International Covenants. He stated that the right to self-determination in the former had a broad application, while in the latter it could only be seen in a colonial context. His delegation understood the right to self-determination in article 3 of the draft declaration as a right which should be exercised within existing, independent and democratic States. It included the right of indigenous peoples to participate at all levels of decision-making in legislative and administrative matters and in the maintenance and development of their political and economic systems.

82. The Chairperson-Rapporteur summarized the debate on the right to self-determination. The positions of participants in the working group had moved closer, particularly when compared to the previous year. He reaffirmed that participants in general agreed that the right to self-determination was the cornerstone of the draft declaration. He recognized that the principle of self-determination was evolving. Although many governments had linked the right to the colonial context, he stated that it could and should be adapted to current circumstances. He noted that the right to self-determination was exercised at two levels - internal and external.

83. Although the Chairperson-Rapporteur acknowledged that differences still existed, he commented that they had become more clearly defined. He noted that there was broad agreement that, in the context of the draft declaration, the right to self-determination could not be exercised to the detriment of the independence and territorial integrity of States. He observed that there was a commitment to the principle of self-determination as enshrined in existing international instruments, namely the two International Covenants. He also noted that some of the governmental representatives that had said that they could adopt article 3 as drafted had done so on the understanding that it did not imply a right of secession. Other delegations had stated that they were prepared to consider clarifying the text of article 3 to make it acceptable to all

participants. Lastly, he noted that some governmental delegations had drawn attention to the fact that those who had developed the text of the draft declaration had stated that it was not their intention that the right to self-determination should imply a right of secession.

84. The Chairperson-Rapporteur said that statements made by indigenous representatives emphasized the need for the right to self-determination to be applied equally and on the basis of non-discrimination. He stated that it was also important to note that no indigenous representatives had said during the debate that their peoples intended to secede in exercise of the right to self-determination and that some indigenous representatives had given assurances that their peoples would respect the territorial integrity of States. He underlined the general feeling among indigenous delegations that domestic legislation should not be an obstacle to the recognition of self-determination. He also noted that many indigenous representatives had invoked other international human rights instruments which contained the right to self-determination.

85. The Chairperson-Rapporteur concluded that the right to self-determination included the right to respect and preserve the identity of indigenous communities. He proposed to the working group that, in order to have a more constructive and focused debate on that matter in the future, the forthcoming discussions could be based on the following three premises:

(a) The recognition that the concerns expressed by some Governments that the exercise of the right to self-determination could result in secession had been responded to by some indigenous delegations, who had offered assurances that they did not want to secede;

(b) As the process of elaboration of the declaration was taking place within the United Nations framework, the formulation of the right to self-determination in the draft declaration should not be in contradiction with the principles which guided the United Nations, i.e. the principles contained in the Charter;

(c) Taking into account that repeated reference had been made by all participants to the universally accepted International Covenants, which contained the right to self-determination, those covenants could be taken as a basis for future discussion.

(c) Land rights, natural resources

86. The representative of the Indigenous World Association referred to the lack of participation of indigenous peoples in land claims and resettlement processes. He asserted his people's absolute title to land and resources in Alaska and urged that the draft declaration be adopted in its present form.

87. The representative of the Upper Sioux Community/Pejihuazizi Oyate commented on the disparity between Western and indigenous understandings of land and ownership and the efforts made by policy makers to assimilate Native Americans and weaken their concept of traditional collectivism.

88. Several indigenous representatives referred to articles 25 to 30 as currently drafted and appealed to States to adopt those articles, which were in accordance with international instruments to which they were already committed.

89. The representative of the Assembly of First Nations emphasized the importance of understanding the spiritual, cultural, social and economic relationship indigenous peoples had had with their land, territories and water resources. He recalled the Canadian Supreme Court decision of Delgamuukw which had affirmed indigenous title to land and said that recognition of indigenous land rights should not create conflict. He stated that negotiations between the Assembly of First Nations and the Government of Canada regarding processes to address land and natural resource rights had progressed slowly and urged the working group to complete its task of elaborating a draft declaration.

90. Several indigenous representatives stressed the importance of including in the draft declaration provisions which dealt with land and resources by drawing the Working Group's attention to the concluding observations of the Committee on Economic, Social and Cultural Rights in respect of Canada's report under articles 16 and 17 of the Covenant. The Committee had expressed its concern about the apparent connection between aboriginal economic marginalization and ongoing dispossession of traditional lands and resources. The indigenous representatives believed that such observations by a United Nations human rights body reinforced the need for a declaration which explicitly stated that generally accepted human rights standards, especially those relating to land and resources, applied to indigenous peoples.

91. Several indigenous representatives referred to the situation of the indigenous Maasai of Kenya and Tanzania. They reported that, in East Africa, Governments had facilitated the alienation of indigenous peoples' lands through various mechanisms. They stated that indigenous peoples were not recognized and were not given an opportunity to determine their rights to land under domestic law. No compensation was provided nor were the owners of land consulted before their land was used. The Maasai were also commonly denied access to spiritual sites.

92. The representative of Australia emphasized that the process of recognition of the rights of indigenous Australians was being progressively clarified by the judiciary and by federal and state legislatures. Australia was already implementing the spirit of many of the articles of the draft declaration relating to land. In Australia, native title could include a range of rights relating to the traditional use and enjoyment of natural resources. Australian law also conferred various substantive and procedural rights on indigenous Australians in connection with the exploitation and use of such natural resources. However, ownership of minerals, petroleum and certain other resources was vested in the Crown and the exploitation and use of such resources was governed by legislation. He said that, in contributing to the development of the parts of the draft declaration dealing with land and natural resources, the Australian delegation would be guided by its domestic law and practice.

93. The representative of New Zealand said that the language of the draft declaration would need to be clarified to ensure consistency with the Treaty of Waitangi settlement processes and policies, and with the domestic law of New Zealand. New Zealand legislation governing the management of resources recognized the traditional cultural relationship the Maori had with their

ancestral lands, water, sites, places of special significance and other valued treasures. However, the right to maintain and strengthen that relationship must be balanced by the need for Governments to own or regulate resources in the interests of all their citizens. She said that New Zealand could support a comprehensive article which consolidated all aspects of indigenous rights in relation to land.

94. In a joint statement, the representative of the International Indian Treaty Council drew the working group's attention to the United Nations Global Consultation on the Right to Development, which had underlined that the most destructive and prevalent abuses of indigenous rights were the direct consequences of development strategies that failed to respect the fundamental right to self-determination. Indigenous peoples were particularly vulnerable in the current era of globalization. Reference was made to Protocol II additional to the Geneva Conventions, which rendered forced removals criminal. The representative also said that treaties and agreements made by States with indigenous peoples upholding their traditional land rights had been repeatedly violated by the same States that legally ratified them. For that reason, the achievement of international recognition for the sacred, basic and fundamental right of indigenous peoples to own, develop, use, control and occupy their traditional lands and resources was imperative and urgent.

95. The representative of Denmark stressed the importance of addressing the question of land rights and natural resources in a manner which was satisfactory to indigenous peoples. She said that a flexible approach to that question was necessary because indigenous peoples often had perceptions of the subject that differed from those of the wider community. Reference was made to how the issue had been settled in Greenland and to the declaration made by the Government of Denmark at the time it ratified ILO Convention No. 169, in which it had explained the unique land ownership situation in Greenland, where rights of ownership could not be acquired by either natural or legal persons but were divided between the State, the Greenland Home Rule authorities and the individual Greenlander.

96. The representative of Canada expressed her endorsement of many of the principles underlying the articles relating to land rights and natural resources. Her delegation strongly supported the principle that indigenous peoples had the right to own, control, develop and use their lands and resources. However, the draft declaration must take into account the many different land and resource arrangements between States and indigenous peoples for it to have a universal application. The current text needed amendment and clarification and, in particular, a clear distinction needed to be made between the terms "lands" and "territories". The term "lands" would refer to those areas which indigenous peoples might own or have exclusive use of. By contrast, the term "territories" would include those areas which indigenous peoples did not own and did not have exclusive use of, but where they might conduct their traditional lifestyle, in accordance with domestic law. Further clarification was also needed of article 25 to ensure that it made reference to an existing right, as suggested in the French version of the text. She also said that the draft declaration's precise restitution criteria were unnecessarily limiting and, as an example, stated that article 27 could include a number of alternatives for providing fair and just consideration to the satisfaction of the indigenous groups concerned. She proposed that that article should be expanded with a separate provision for providing adequate processes for dealing with land claims.

97. The representative of the International Work Group for Indigenous Affairs referred to the situation of the Ogoni people and stated that by adopting articles 26, 27 and 28, Governments would forestall a repetition of the Ogoni experience.

98. The representative of Malaysia said that land and resources were key issues in the draft declaration. He considered that some concepts within articles required further clarification, including the term "spiritual relationship" and the scope of terms such as "forcibly removed" and "compensation". His Government considered the articles to have been drafted in language which was too broad, in view of the complexity of the issues under consideration.

99. The representative of the United States of America expressed support for the goals of draft articles 25, 26, 27, 28, 29 and 30. With respect to article 25, he made reference to a 1996 Presidential Executive Order which acknowledged the federal Government's special responsibility to protect federally owned sacred sites of the American Indians and Alaska Natives. He expressed concern at the broad language of article 26, which seemed to give indigenous peoples the right to ownership of land they had "traditionally occupied or otherwise used", but pledged his delegation's commitment to continuing to work towards a positive resolution of the language of such a valuable article. The representative referred to article 27 and indicated that the United States had taken steps to settle numerous Indian land claims.

100. The representative of the International Work Group for Indigenous Affairs drew the working group's attention to the situation of the Nama in Namibia and their attendant impoverishment and loss of self-esteem. He requested that States adopt the relevant articles, 25, 26, and 27, without alteration, as no development could be realized without land.

101. The representative of the Indian Law Resource Center referred to the concluding observations of the Human Rights Committee in 1995 concerning the periodic report of the United States of America, in which the Committee had recommended that steps be taken to ensure that previously recognized indigenous treaty rights could not be extinguished.

102. Several indigenous representatives expressed their concern at the statement delivered by the Government of Canada with respect to the definition of the word "territories" and the right of indigenous peoples to exercise self-determination within their territories. They also said that indigenous peoples had an expansive view of territories and questioned whether the wording of the statement by the Government of Canada was an attempt to limit the right to self-determination and the scope of rights to land and natural resources.

103. The representative of the Association for the Shor People reiterated the view expressed by other indigenous representatives that the right to self-determination and right to land, territories and natural resources were linked. He expressed concern for indigenous peoples' rights to compensation for mining and oil and gas activities and urged the adoption of articles 25, 26 and 27 in their present form.

104. The representative of Guatemala stated that the Government of Guatemala considered that the definition and interpretation of the word "territories" should be consistent with the definition and interpretation given to it by the drafters of the original text. She referred to the report (E/CN.4/Sub.2/1993/26/Add.1) of the Chairperson-Rapporteur of the Working Group on

Indigenous Populations, Mrs Erica-Irene Daes, in which the indigenous peoples' differing perception of territories was noted. The representative of Guatemala said that her Government was of the view that the word "territory" should not be confused with the definition of "territorial integrity" in international law and did not give any rights to political separation from the territory of a State.

105. The representative of Na Koa Ikaika O Ka Lahui Hawaii noted that an apology bill passed by the United States Congress in 1993 referred to the same principles contained in articles 25, 26, 27, 28, 29 and 30 of the draft declaration and urged that those articles be adopted without amendment. He was perplexed about the United States position regarding the wording of article 27 since it contained similar wording to the text of the federal United States settlement acts.

106. Several indigenous representatives referred to the statement of the Government of Australia and stated that it was inappropriate for domestic law to limit and control the development of international standards. They made reference to recent developments in Australia, where the Australian High Court and Federal Court had reinforced indigenous rights to resources. They stated that the finding of the Committee on the Elimination of Racial Discrimination that the 1998 amendments to the Native Title Act were in breach of Australia's international obligations demonstrated the critical importance international standards played in protecting the rights of indigenous peoples. The representatives believed that, for that reason, the land and resource provisions of the draft declaration should be adopted in their current form.

107. The representative of the National Aboriginal and Islanders Legal Services Secretariat referred to a recent Australian High Court decision and said that common law rights in Australia were consistent with articles 25, 26, 27, 28, 29 and 30. He proposed, that unless clear reasons were enunciated as to why indigenous peoples should not share in the benefits and burdens of caring for the land and natural resources, then articles 26, 27, 28, 29, and 30 should be adopted without amendment. He also suggested that if the declaration was adopted, a series of regional implementation protocols could be implemented.

108. The representative of the Maori Legal Service reiterated that domestic law must not be invoked to limit the development of international standards. The representative rejected the proposal to consolidate all aspects of land and resource rights in the draft declaration, justifying that rejection by alluding to the fact that every article of the draft declaration was based upon known instances of violations of the human rights of indigenous peoples and that any suggestion that indispensable elements of the declaration could be removed by combining articles would be vigorously resisted.

109. The representative of Venezuela expressed concern over the use of the term "territory" in the draft declaration, because of its political connotations in the definition of States. He said that the text must be compatible with domestic law and that he preferred the use of the word "land". He stressed the importance of having a draft declaration which could be incorporated in the legislation of all States.

110. The representative of the Russian Federation stated that the relevant articles on land should not lead to an infringement on the State or an encroachment upon peoples already living

on the land. He furthermore affirmed that his Government accepted the articles in the draft declaration and would do its utmost to ensure the implementation of indigenous peoples' rights in accordance with international standards.

111. The representative of the Federation des organisations amerindiennes de Guyane said that the indigenous peoples of Guyana had maintained their autonomy owing to geographic isolation but, with recent economic developments, there had been increasing conflicts over land. He said that their resources and territories were affected and that no national laws were in place to protect their lands.

112. The Chairperson-Rapporteur summarized the debate on land rights and natural resources. He noted that there was still considerable divergence between the different points of view expressed by participants in the working group, particularly because the notion of land was not the same for indigenous communities and the societies around them. He pointed out that views were becoming more frank and open and that some areas of agreement were emerging. He noted the commitments by particular States to issues of land rights and natural resources. He recognized that the question of land rights was closely linked to self-determination and that that fact had to be reflected in the final version of the declaration when adopted. He emphasized that the growing goodwill and flexibility that were being demonstrated would make it possible to reach an understanding between the participants in the working group. Such understanding should take into account the fact that lands and natural resources not only had material value for indigenous communities, but also spiritual significance.

Articles 15, 16, 17 and 18

113. The Chairman-Rapporteur asked the governmental delegations to continue informal consultations with a view to bringing closer together the various proposals made by Governments on articles 15, 16, 17 and 18 at the fourth session of the working group. As a result of a number of open-ended informal consultations throughout the fifth session of the working group, the Chairperson-Rapporteur received four informal papers for discussion on those articles. The Chairperson-Rapporteur expressed his satisfaction and welcomed the efforts made by governmental delegations to find common understanding.

114. The working group held nine informal meetings to consider the proposals for discussion made by governmental delegations. Governmental delegations introduced those papers to the working group. During this informal debate, governmental representatives reiterated the commitment of the Governments to the elaboration of a strong and effective declaration and the need to achieve progress at the current session with regard to the cluster of articles 15 to18. The frank and constructive discussion of the principles and substance of these four articles allowed Governments to produce alternative texts for each one of these articles which include some bracketed wording reflecting outstanding issues requiring further consideration. Some governmental representatives expressed the view that they could agree to the cluster as originally drafted, either in total or in part. Others expressed a preference for the current text as approved by the Sub-Commission. However, the emerging view of the participating governmental delegations was that the alternative texts could be considered as an acceptable basis for further work and could be presented to the working group in order to advance the discussion in plenary. Governmental delegations also agreed to continue working to build consensus on the declaration

115. It was also stated by governmental delegations that, in discussing these alternative texts, Governments had taken into account the guiding principles for standard-setting working groups in the field of human rights contained in General Assembly resolution 41/120 and had also borne in mind what had been said at the current and previous sessions on other principles that should be taken into consideration.

116. Governmental delegations expressed the view that the alternative texts presented through the Chairperson-Rapporteur for the cluster of articles 15 to 18 represented an important step forward in the work of the working group and would be considered an acceptable basis for future work. These texts and an explanatory note on the use of brackets around the term "indigenous peoples" are contained in annex I to the present report.

117. Governmental representatives also said that they were looking forward to pursuing discussions on other articles at the next session of the working group and would be pleased to consider including indigenous observers in informal meetings among Governments when discussions focused on specific articles of the declaration, if those meetings could be part of the work schedule of the next session. Governmental delegations believed that that method of work could be conducive to better understanding amongst all participants in the working group.

118. A fruitful debate took place and confirmed that there was growing consensus in regard to the underlying principles of the articles which did not necessarily mean, however, that there was a consensus on the final wording. Several key issues remained to be solved. In addition to the need stated by governmental delegations for further discussion on the use of the term "indigenous peoples", the four proposed texts also presented the terms "shall/should" between brackets. Indigenous representatives stated that the term "shall" had consistently been used in all declarations of the United Nations. Many governmental representatives expressed their preference for the term "shall". Some governmental representatives supported the term "should". The debate indicated that this issue should be also considered at a later stage.

119. Representatives of the indigenous caucus expressed some general concerns in relation to the informal discussion on the papers presented by governmental delegations. They also expressed their reservations on the use of brackets around the words "indigenous peoples". They stated that their comments on the articles under discussion would be made on the basis of the wording of the original draft.

120. Indigenous representatives expressed their strong opposition to focusing discussion of these articles on anything other than the original text of the declaration, as approved by the Sub-Commission. They emphasized that the accepted procedure for the working group since its inception under Commission on Human Rights resolution 1995/32 had been to consider the original text as a basis for all work and discussions addressing the declaration's underlying principles, as well as the specific content of the articles. Indigenous representatives expressed their firm commitment to continuing their participation in the discussions during the current and future sessions based on that procedure.

121. All indigenous representatives expressed their opposition to the changes proposed by the governmental representatives to articles 15, 16, 17 and 18, which they believed deleted the recognition of important rights and served to weaken and undermine the current text. According

to the indigenous representatives, those proposals were in contradiction to the letter, spirit and philosophy of the international instruments that were the source of the text of the draft declaration approved by the Sub-Commission. Therefore, they reiterated that, in their view, articles 15, 16, 17 and 18 should be adopted without delay as originally drafted. The original wording and an explanatory note on the use of brackets in the paper for discussion are contained in annex II to the present report.

122. Another general concern pertaining to the four articles under discussion expressed by indigenous representatives was the question of self-determination. They strongly reaffirmed that that right underlay all the articles under discussion.

123. At the request of indigenous representatives, papers for discussion were distributed in English, French and Spanish, even though they were not official documents.

124. Some indigenous organizations set out certain criteria which might be used in reviewing proposed changes to the text. They recommended that proposals for changes should be reasonable, necessary and improve or strengthen the text, and that they should be consistent with the fundamental principles of equality, non-discrimination and the prohibition of racial discrimination.

125. In addition to these general concerns that applied to the whole cluster under discussion, some specific questions were raised during the discussion of the substance of each article. In general, governmental delegations stressed that the aim of their proposals was to improve, clarify and strengthen the text and at the same time to make it acceptable to all participants.

Article 15

126. With regard to the first paragraph of article 15, the debate showed the difficulty of striking a balance between autonomy and respect for differences while ensuring that there was equality of opportunity so that education measures did not become a means of discrimination. The use of the words "where practicable" in paragraph 2 of article 15 raised issues relating to resources. All indigenous participants stressed that there was no need for changes in this article. Some governmental representatives expressed their willingness to reconsider their proposals in the light of these comments. At the same time they also encouraged indigenous representatives to consider further some of the proposals that Governments considered could improve the text.

Article 16

127. Indigenous representatives supported article 16 in its original version. They stated that the proposal by the Governments was not acceptable and they argued that it weakened the text. In particular they expressed concern about the deletion of the words "have the right" from article 16 in the paper. Some governmental representatives said that they would take into account these concerns in the future. Indigenous representatives also requested some clarification on the replacement of the words "to eliminate" with "to combat" in paragraph 2 of the article. Governmental representatives stated that States' commitment could only refer to efforts towards the elimination of discrimination and not to the elimination of prejudice itself, which would be impossible.

Article 17

128. Indigenous representatives reiterated their preference for keeping article 17 in its original form. They expressed the view that the additional text proposed for paragraph 1 was equivalent to the original text, which made it unnecessary. Some Governmental representatives said that the underlying principle of non-discrimination was reinforced in paragraph 1 of revised article 17. Other governmental representatives said that they would consider the argument put forward by indigenous representatives. Indigenous representatives voiced their opposition to the inclusion of the additional sentence in paragraph 2 of article 17. Governmental representatives insisted that they considered that addition to be an improvement to the original text.

Article 18

129. Governmental representatives drew attention to a new element in the revised text referring to the worst forms of child labour. Their proposal included a new concept of international law, as codified in ILO Convention No. 182 on the worst forms of child labour, unanimously adopted in June 1999. They said that, even though the Convention had not yet been ratified by many States, consensus could easily be reached on the inclusion of such a reference. Governmental representatives believed that the inclusion of that concept demonstrated that the draft declaration could be improved and that the scope of an article could be expanded.

Annex I

AMENDMENTS TO ARTICLES 15 TO 18 PROPOSED BY GOVERNMENTS FOR FUTURE DISCUSSION

There is no consensus on the use of the term "indigenous peoples" in the working group, in part because of the implications this term may have in international law, including with respect to self-determination and individual and collective rights. Some delegations have suggested using other terms in the declaration, such as "indigenous individuals", "persons belonging to an indigenous group" or "persons belonging to indigenous peoples". In addition, the terms used in individual articles may vary, depending on the context. Hence, the bracketed use of the term "indigenous peoples" in the draft declaration is without prejudice to an eventual agreement on terminology.

In the proposals that follow, references to the text of the original draft are highlighted in bold.

Article 15

Indigenous individuals, particularly **children, have the right to all levels and forms of education of the State** on the same basis as other members of the society. **[Indigenous peoples] have** the **right**, in consultation with competent authorities in the State, and in accordance with applicable education laws and standards, **to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.**

Indigenous children living outside their communities should, where practicable, have **access to education in their own culture and language.**

States [shall/should] **take effective measures to provide appropriate resources for these purposes.**

Article 16

The dignity and diversity of **[indigenous peoples'] cultures, traditions, histories and aspirations** should be **appropriately reflected in education and public information.**

States [shall/should] **take effective measures, in consultation with the [indigenous peoples] concerned, to** combat **prejudice, eliminate discrimination and promote tolerance, understanding and good relations among [indigenous peoples] and all** other **segments of society.**

Article 17

[Indigenous peoples] have the right to establish their own media in their own languages and **to access all forms of non-indigenous media**, on the same basis as the other members of the society.

States [shall/should] **take effective measures to ensure that State-owned media duly reflect indigenous cultural diversity**. States, without prejudice to ensuring full freedom of expression, should encourage privately-owned media to adequately reflect indigenous cultural diversity.

Article 18

[Indigenous peoples] shall **enjoy fully all rights established under** applicable **international and national labour law**. States should take immediate and effective measures to ensure that indigenous children are protected from the worst forms of child labour.

Indigenous individuals have the right not to be subjected to any discriminatory conditions of labour, employment or salary.

Annex II

PROPOSALS BY INDIGENOUS REPRESENTATIVES FOR ARTICLES 15-18

Indigenous representatives and some governmental delegations supported the current wording of articles 15, 16, 17 and 18. The articles are reproduced below.

All indigenous delegations support the use of the term indigenous peoples in the draft declaration. Many governmental delegations have accepted the use of the term indigenous peoples in the draft declaration. A very small number of governmental delegations have suggested using other terms. Hence, there is not yet consensus on the use of the term indigenous peoples in the working group.

Article 15

Indigenous children have the right to all levels and forms of education of the State. All indigenous peoples also have this right and the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.

Indigenous children living outside their communities have the right to be provided access to education in their own culture and language.

States shall take effective measures to provide appropriate resources for these purposes.

Article 16

Indigenous peoples have the right to have the dignity and diversity of their cultures, traditions, histories and aspirations appropriately reflected in all forms of education and public information.

States shall take effective measures, in consultation with the indigenous peoples concerned, to eliminate prejudice and discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all segments of society.

Article 17

Indigenous peoples have the right to establish their own media in their own languages. They also have the right to equal access to all forms of non-indigenous media.

States shall take effective measures to ensure that State-owned media duly reflect indigenous cultural diversity.

Article 18

Indigenous peoples have the right to enjoy fully all rights established under international labour law and national labour legislation.

Indigenous individuals have the right not to be subjected to any discriminatory conditions of labour, employment or salary.

Annex III

COMMENTS BY THE NON-GOVERNMENTAL ORGANIZATION MOVIMIENTO INDIO "TUPAJ AMARU" ON ARTICLES 15, 16, 17 AND 18

Article 15

All indigenous peoples have a collective and individual right to compulsory, free, comprehensive and diversified education at all levels and in all forms of basic, middle and higher education in their own languages, including bilingual education. They are also entitled to formulate their own educational policies, to establish and control their educational systems and institutions and to manage and administer for themselves the resources assigned thereto, in accordance with standards and procedures established at the national level.

States recognize education as their highest function and agree to provide sufficient resources to promote it, with a view to achieving full development of the human personality, increased respect for human rights and maintenance of peace.

Article 16

Indigenous peoples have not only the right, but the duty, to ensure that the dignity and diversity of their age-old cultures, traditions, histories and aspirations are appropriately reflected in all forms of education and public and private information.

States shall take effective measures, with the full consent of the peoples concerned, to eliminate detrimental attitudes of superiority and racial discrimination and to promote tolerance, understanding and friendly relations between indigenous peoples and segments of the national community.

Article 17

Indigenous peoples have the right to establish their own media in their own languages, and the right of access to all forms of non-indigenous media, on an equal footing with other members of society.

Indigenous peoples also have full authority to set up their own radio and television broadcasting networks with a view to inculcating in indigenous society respect for human dignity and the duty to preserve its cultural identity and foster friendship and peace among indigenous nations.

States shall take effective measures to ensure that State-owned and private media objectively reflect indigenous cultural diversity and adequately guarantee the right to freedom of expression.

Article 18

Under the international conventions adopted by ILO and pursuant to national labour legislation, indigenous peoples are fully entitled to employment, free choice of employment, satisfactory conditions of employment, medical care and social security, without distinction or discrimination on grounds of race or identity.

Indigenous workers are also entitled to equal pay for equal work, with no discrimination whatsoever.

Pursuant to their labour legislation, States shall take appropriate action to ensure the effective exercise of the labour rights referred to in this article. They shall, especially, provide legal protection for children against illegal exploitation and degrading forms of child labour that might have damaging consequences for their health, education and physical and mental development.